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NOTES OF CASES.

When a Governor Is Not a Governor.—The question in *Ex parte Crump* (Criminal Court of Appeals of Oklahoma), 135 *Pacific Reporter*, 428, is, Does a Governor's absence from a state for a few hours or days serve to put in force the constitutional provisions allowing the Lieutenant Governor to act in his place? George Crump was convicted on a charge of forgery to serve a seven-year term in prison. Lieutenant Governor J. J. McAlester pardoned him in the absence of Governor Lee Cruce. The return to the writ of habeas corpus denied that Crump was pardoned, stating that the purported pardon was void in that it was attempted to be granted without authority of law by the Lieutenant Governor of the state when the Governor was qualified and acting, and when the occasion contemplated by the Constitution for the Lieutenant Governor to act as Governor had not arisen. The Governor on his return immediately directed respondent to disregard the pretended pardon, and insisted that his absence was merely temporary, and did not warrant the Lieutenant Governor in acting in his place. The court said: "A pardon is an act of grace and mercy bestowed by the state, through its chief executive, upon offenders against its law. Yet a pardon properly granted is also an act of justice, supported by a wise public policy. While the power to pardon, parole, relieve, or commute after conviction for offenses against the state is a matter of executive discretion, this discretion should be exercised on public considerations alone. An undue exercise of the pardoning power is greatly to be deplored. It is inexcusable. It is a blow at law and order, and is an additional hardship upon society in its irrepressible conflict with crime and criminals. If the Governor believes a law under which the prisoner has been convicted to be unjust or too harsh, still he should not for that reason alone exercise the pardoning power. The duty of mitigating the severity of the law lies with the Legislature. As an officer he should look upon the law as wise and just, whatever may be his private opinion. An abuse of the pardoning power may be so great as to warrant an impeachment of the officer who exercises it. * * * A full, unconditional pardon takes effect upon delivery either to the person who is the subject of the favor or to some one acting for him or on his behalf. After delivery, a pardon cannot be revoked. The authorities, without any conflict whatever, deny to the Governor any such power, and hold the pardon, when delivered, to be irrevocable. * * * An abuse of the pardoning power does not authorize the courts to decline to give effect to a pardon, and no court has the power to review the action of the executive in granting a pardon, for that would be the exercise of the pardoning power in part, and any attempt of the courts to interfere with the Governor

in the exercise of the pardoning power would be manifest usurpation of authority. * * * The functions of chief magistrate were created for the benefit of the state and are local to it; and, as the constitutional functions of his office cannot be exercised out of the state, the effect of his absence from the state is to suspend his constitutional functions, and thereupon these functions devolve upon the Lieutenant Governor, and he becomes and is *de jure* and *de facto* Governor until the absent Governor returns to the state. * * * It follows that the pardon granted and delivered by the Lieutenant Governor as acting Governor, in the absence of the Governor from the state, is a valid and effectual pardon. *A fortiori* the warden had no authority to disregard it. As already indicated, the Governor has no power to revoke a full and unconditional pardon that has been delivered; therefore his order purporting to revoke this pardon was necessarily a mere nullity."

Note.—A similar question arose in Virginia before the electrocution of the Allens for the Carroll County murders, when the state was generally aroused and most determined efforts were made to have the convicted men pardoned or their sentences commuted. Just before the date set for carrying out the sentence, the governor left the state temporarily, and the friends and advocates of the Allens called on the lieutenant governor to grant a pardon or to commute the sentence. The matter was never judicially determined, as the governor returned to the state before the lieutenant governor had acted in any way, but the attorney general held at the time that it was beyond the power of the lieutenant governor to act in such cases during the temporary absence of the governor.

Sunday Contract for "Joy Ride."—*Jones v. Belle Isle*, 79 South-eastern Reporter, 357, was a suit brought to recover for the hire of an automobile. The contract was entered into on Sunday, and the cars were used on Sunday for "joy riding." The plaintiff's ordinary and usual business was letting automobiles for hire. The Court of Appeals of Georgia says that the pursuit of one's ordinary calling on Sunday, except for necessity or for charity, is a crime, and holds that a contract made on Sunday in furtherance of work of the ordinary calling of one of the contracting parties cannot be enforced by him.